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11 UNITED STATES DISTRICT COURT

12 FOR THE NORTHERN DISTRICT OF CALIFORNIA

13 ANTONIO CARBAJAL, an individual,

14 Case No.

15 Plaintiffs,

16 **CLASS ACTION**

17 v.

18 **COMPLAINT FOR:**

19 RENTOKIL NORTH AMERICA, INC.,
20 a Pennsylvania corporation; and DOES 1
21 through 100, inclusive,

22 Defendants.

- 23
- 24 **1) FAILURE TO PAY
25 OVERTIME AND
DOUBLETIME PREMIUM
WAGES;
2) PAY STUB VIOLATIONS;
3) UNFAIR COMPETITION;
AND
4) FLSA VIOLATIONS**

26 **DEMAND FOR JURY TRIAL**

27

28 **TO ALL INTERESTED PARTIES HEREIN AND TO THEIR
ATTORNEYS OF RECORD:**

COME NOW, PLAINTIFF Antonio Carbajal and the putative class (collectively, “Plaintiffs”), and submit the following Complaint against Rentokil North America, Inc. and DOES 1 through 100, inclusive (collectively, “Defendants”), and each of them as follows.

INTRODUCTION

1 1. This is a class and collective action brought by Plaintiff Tony Carbajal and
2 any other person or persons later joined as plaintiffs (collectively, Plaintiff Tony
3 Carbajal and any other later-joined plaintiffs are referred to herein as the “Named
4 Plaintiffs”) on behalf of themselves and all others similarly situated. The Named
5 Plaintiffs and those similarly situated are or were employed by Defendants as pest
6 control technicians, and were denied proper compensation as required by state and
7 federal wage-and-hour laws.

8 2. The Putative Class is made up of each and every person who has worked
9 for Defendants in California as a pest control technician at any time between November
10 17, 2013 and the trial of this action (the “California Class Period”).

11 3. The FLSA Collective is made up of each and every person who has
12 worked for Defendants as a pest control technician at any time between November 17,
13 2014 and the trial of this action (the “Collective Period”).

14 4. During the California Class and Collective Periods, Defendants failed to
15 pay overtime compensation to the Named Plaintiffs and each member of the putative
16 classes/collectives as required by federal and state law. Specifically, Defendants failed
17 to include non-discretionary bonus earnings in the employees’ regular rate for the
18 purpose of calculating overtime and doubletime wages and failed to pay overtime and
19 doubletime on said bonus earnings. The Named Plaintiffs seek relief for the Putative
20 Class employees under California wage-and-hour law and for the FLSA Collective
21 under the FLSA, to remedy Defendants’ continued failure to pay all wages due, pay
22 appropriate overtime and doubletime compensation, pay waiting-time penalties, and to
23 provide accurate wage statements.

JURISDICTION

24 5. Jurisdiction over Plaintiffs’ federal claims is based upon (a) Section 16(b)
25 of the Fair Labor Standards Act, 29 U.S.C. § 216(b), which authorizes employees to
26 bring civil actions in courts of appropriate jurisdiction to recover damages for an
27

1 employer's failure to pay overtime wages as required by the FLSA; and (b) 29 U.S.C.
2 §§ 1331 and 1337.

3 6. Jurisdiction over Plaintiffs' state law class action claims under the
4 California Labor Code and the claim under section 17200 of the California Business
5 and Professions Code are based upon this Court's supplemental jurisdiction under 28
6 U.S.C. § 1337(a), because the state law claims are so related to Plaintiffs' federal claims
7 that they form a part of the same case or controversy between Plaintiffs and Defendants.

VENUE

9 7. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b). At all
10 times material herein, Defendant Rentokil North America, Inc. has been actively
11 conducting business in the State of California and within the geographic area
12 encompassing the Northern District of the State of California. Moreover, the unfair
13 business practices complained of herein took place, in part, within the Northern District
14 of California, as Plaintiff Carbajal maintained his residence and worked for Defendants
15 in the vicinity of Napa, California.

THE PARTIES

17 8. At all times herein mentioned, Plaintiff Tony Carbajal was an employee of
18 Defendants, working in the state of California as a pest control technician, from in or
19 about December 8, 2012 through the present. At all times herein mentioned Plaintiff
20 Carbajal was an individual residing in the City of Napa, County of Napa, State of
21 California.

22 9. At all times herein mentioned, Plaintiffs are informed and believe and,
23 based on such information and belief, thereon allege that Rentokil North America, Inc.
24 is a Pennsylvania corporation that does business in the Northern District of California.

25 10. At all times material to this action, Defendants have been enterprises
26 engaged in commerce or in the production of goods for commerce as defined by §
27 203(s)(1) of the FLSA, and have had a gross volume of sales exceeding \$500,000.

28 || 11. At all times material to this action, Defendants have been an “employer” of

1 Plaintiffs, as defined by section 203(d) of the FLSA.

2 12. The true names and capacities, whether individual, corporate, associate,
 3 representative or otherwise, of the defendants identified herein as Does 1 through 100,
 4 inclusive, are unknown to Plaintiffs, who therefore sue these defendants by said
 5 fictitious names. Plaintiffs will amend this Complaint to allege the true names and
 6 capacities of Does 1 through 100 when they have been ascertained. Does 1 through 100
 7 are in some manner legally responsible for the wrongs and injuries alleged herein.

8 13. Each of the Defendants acted as the agent or employee of the others and
 9 each acted within the scope of that agency or employment.

CALIFORNIA STATE LAW CLASS ACTION ALLEGATIONS

10 14. Plaintiffs bring this action as a class action pursuant to Rule 23 of the
 11 Federal Rules of Civil Procedure on behalf of the following defined class (the “Putative
 12 Class”): Each and every person who has worked for Defendants in California as a pest
 13 control technician at any time between November 17, 2013 and the trial of this action
 14 (the “California Class Period”).

15. Numerosity: The Putative Class represents over 25 persons and is so
 16 numerous that the joinder of each member of the putative class is impracticable.

17. Typicality: The Named Plaintiffs’ claims are typical of the members of the
 18 California Class. The Named Plaintiffs are informed and believe that, like other pest
 19 control workers, they routinely worked more than forty hours per week, and more than
 20 eight (or even twelve) hours per day, during the California Class Period. The Named
 21 Plaintiffs had the same duties and responsibilities as other Putative Class members. The
 22 Named Plaintiffs and the Putative Class were subject to Defendants’ policy and practice
 23 of failing to pay appropriate overtime and doubletime compensation, willfully failing to
 24 pay all earned wages at termination/resignation, and failing to provide accurate itemized
 25 wage statements.

26 17. Superiority: A class action is superior to other available methods for the
 27 fair and efficient adjudication of the controversy, particularly in the context of wage-

1 and-hour litigation where individual plaintiffs lack the financial resources to vigorously
2 prosecute separate lawsuits in federal court against large corporate defendants such as
3 Ecolab. The members of the Putative Class that the Named Plaintiffs represent have no
4 plain, speedy or adequate remedy at law against Defendants, other than by maintenance
5 of this class action, because Plaintiffs are informed and believes, and on such
6 information and belief alleges, that the damage to each member of the Putative Class is
7 relatively small and that it would be economically infeasible to seek recovery against
8 Defendants other than by a class action.

9 18. Adequacy: The Named Plaintiffs will fairly and adequately represent the
10 interests of the Putative Class, because the Named Plaintiffs are members of the
11 Putative Class, and the Named Plaintiffs' claims are typical of those in the Putative
12 Class.

13 19. Commonality: Common questions of law and fact exist as to all members
14 of the Putative Class and predominate over any questions solely affecting individual
15 members of the Class. There is a well-defined community of interest in the questions of
16 law and fact affecting the Putative Class that the Named Plaintiffs represent. The
17 Putative Class members' claims against Defendants involve questions of common or
18 general interest, in that each was employed by Defendants, and each was not paid
19 wages owed based on the same failure to include nondiscretionary bonus/commission
20 earnings in their regular rate of pay for the purpose of calculating overtime/doubletime
21 and failing to pay overtime on said bonus earnings. Moreover, each of the California
22 Class members received defective paycheck stubs that did not include correct amounts
23 for overtime/doubletime wages earned or overtime/doubletime rates of pay. These
24 questions are such that proof of a state of facts common to the members of the
25 California Class will entitle each member to the relief requested in this complaint.

26 20. This case is maintainable as a class action under Fed. R. Civ. P. 23(b)(1)
27 because prosecution of actions by or against individual members of the Putative Class
28 would result in inconsistent or varying adjudications and create the risk of incompatible

1 standards of conduct for Defendants. Further, adjudication of each individual member's
 2 claim as a separate action would be dispositive of the interest of other individuals not
 3 party to this action, impeding their ability to protect their interests.

4 21. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(2)
 5 because Defendants have acted or refused to act on grounds that apply generally to the
 6 class, so that final injunctive relief or corresponding declaratory relief is appropriate
 7 respecting the class as a whole.

8 22. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(3)
 9 because questions of law and fact common to the Putative Class predominate over any
 10 questions only affecting individual members of the Putative Class, and because a class
 11 action is superior to other available methods for the fair and efficient adjudication of
 12 this litigation. Defendants' common and uniform policies and practices denied the
 13 members of the Putative Class the overtime and doubletime pay to which they are
 14 entitled and accurate paycheck stubs. The damages suffered by the individual Putative
 15 Class members are small compared to the expense and burden of individual prosecution
 16 of this litigation. In addition, class certification is superior because it will obviate the
 17 need for unduly duplicative litigation that might result in inconsistent judgments about
 18 Defendants' practices.

19 23. The Named Plaintiffs intend to send notice to all members of the Putative
 20 Class to the extent required by Rule 23. The names and addresses of the members of
 21 the Putative Class are available from Defendants.

COLLECTIVE ACTION ALLEGATIONS

22 24. The Named Plaintiffs also brings this action on behalf of themselves and
 23 other similarly situated employees as authorized under the FLSA, 29 U.S.C. § 216(b).
 24 The employees similarly situated are as follows (the "FLSA Collective"): Each and
 25 every person who has worked for Defendants as a pest control technician at any time
 26 between November 17, 2014 and the trial of this action (the "Collective Period").

27 25. Upon information and belief, Defendants knew that Plaintiffs and the

1 FLSA Collective performed work that required overtime pay. Defendants operated
2 under a scheme to deprive these employees of overtime compensation by failing to
3 properly compensate them for all hours worked. Specifically, Defendants did not
4 include nondiscretionary bonus/commission earnings in the employees' regular rates of
5 pay for the purpose of calculating overtime and doubletime wages.

6 26. Defendants are liable under the FLSA for failing to properly compensate
7 Plaintiffs and the FLSA Collective, and as such, notice should be sent to the Collective.
8 There are numerous similarly situated current and former workers who have been
9 denied overtime pay by Defendants in violation of the FLSA who would benefit from
10 the issuance of Court-supervised notice of this lawsuit and the opportunity to join.
11 Those similarly situated workers are known to Defendants and should be readily
12 identifiable through Defendants' records.

FIRST CAUSE OF ACTION

Failure To Pay Overtime And Doubletime Premium Wages

**(Action Brought By The Named Plaintiffs On Behalf Of Themselves
And The Putative Class Against All Defendants)**

17 27. Plaintiffs incorporates by reference and re-allege each and every one of the
18 allegations contained in the preceding and foregoing paragraphs of this Complaint as if
19 fully set forth herein.

20 28. California law requires payment of overtime premium pay for all hours
21 worked by non-exempt employees in excess of eight in one day or 40 hours in one week
22 and for the first eight hours on the seventh-straight day of work in one workweek. Lab.
23 Code § 510. It further requires payment of doubletime premium pay for all hours
24 worked by non-exempt employees in excess of twelve hours in one day or in excess of
25 eight hours on the seventh-straight day of work in a single workweek. *Id.* Overtime
26 premiums must be paid at the rate of 1.5 times an employee's regular rate of pay. *Id.*
27 Doubletime premiums must be paid at the rate of 2.0 times an employee's regular rate
28 of pay. *Id.* Pursuant to California law, nondiscretionary bonuses must be included in

1 an employee's regular rate of pay for the calculation of overtime and doubletime
2 premium wages. *Marin v. Costco Wholesale Corp.*, 169 Cal. App. 4th 804, 807 (2008),
3 as modified on denial of reh'g (Jan. 21, 2009).

4 29. California law also requires payment of overtime on nondiscretionary
5 bonuses. When a bonus is based on a percentage of production or some formula other
6 than a flat amount and can be computed and paid with the wages for the pay period to
7 which the bonus is applicable, overtime on the bonus must be paid at the same time as
8 the other earnings for the week, or no later than the payday for the next regular payroll
9 period. *See* Lab. Code § 204. Since the bonus was earned during straight time as well
10 as overtime hours, the overtime "premium" on the bonus is half-time or full-time (for
11 double time hours) on the regular bonus rate. The regular bonus rate is found by
12 dividing the bonus by the total hours worked during the period to which the bonus
13 applies.

14 30. The Named Plaintiffs and the Putative Class regularly worked hours,
15 including for hours they worked in excess of eight in a day, 40 in a week, and on the
16 seventh straight day of work in a workweek, for which they were not paid overtime or
17 doubletime premium wages according to California law. Defendants routinely paid the
18 Named Plaintiffs and the Putative Class nondiscretionary bonuses and did not include
19 the remuneration paid for such bonuses into the employees' regular rates of pay for the
20 purposes of calculating overtime and doubletime premium wages. Defendants also did
21 not pay overtime on the bonus earnings.

22 31. The Named Plaintiffs and the Putative Class seek such overtime and
23 doubletime premium wages and bonus overtime wages owed to them for the three-year
24 period measured backward from the date of the filing of the initial Complaint in this
25 matter. (In the Unfair Business Practices cause of action stated herein, the Named
26 Plaintiffs and the Putative Class seek restitution of unpaid overtime and doubletime
27 wages and bonus overtime wages due for the four-year period measured backward from
28 the date of the filing of the initial Complaint in this matter.)

1 32. The exact amount of overtime and doubletime premium wages and bonus
2 overtime wages owed will not be fully ascertained until discovery is completed. Until
3 Defendants produce the necessary documents for an accounting, Plaintiffs will be
4 unable to determine the exact amount of wages owed.

5 33. Plaintiffs seek interest on all overtime and doubletime premium and bonus
6 overtime wages owed to them for the three-year period measured backward from the
7 date of the filing of the initial Complaint in this matter, pursuant to Labor Code sections
8 218.6 and 1194.

9 34. Pursuant to Labor Code sections 218.5 and 1194, Plaintiffs request the
10 Court to award their reasonable attorney's fees and costs incurred in this action.

SECOND CAUSE OF ACTION

Pay Stub Violations

(Action Brought By The Named Plaintiffs On Behalf Of Themselves

And The Putative Class Against All Defendants)

15 35. Plaintiffs incorporate by reference and re-allege each and every one of the
16 allegations contained in the preceding and foregoing paragraphs of this Complaint as if
17 fully set forth herein.

18 ||| 36. California Labor Code section 226 provides:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all deductions made on written orders of the

1 employee may be aggregated and shown as one item, (5) net
 2 wages earned, (6) the inclusive dates of the period for which the
 3 employee is paid, (7) the name of the employee and his or her
 4 social security number, (8) the name and address of the legal
 5 entity that is the employer, and (9) all applicable hourly rates in
 6 effect during the pay period and the corresponding number of
 7 hours worked at each hourly rate by the employee.

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1 though fully set forth herein.

2 40. This cause of action is being brought pursuant to California Business and
3 Professions Code section 17200 et seq. and California case law including *Cortez v.*
4 *Purolator Air Filtration Products Co.* (2000) 23 Cal.App.4th 163.

5 41. It is alleged that Defendants have willfully failed to pay the Named
6 Plaintiffs and the Putative Class the state-mandated overtime and doubletime premium
7 wages for all hours worked and on all nondiscretionary bonus earnings. The failure to
8 pay such wages constitutes an unfair business practice under California Business and
9 Professions Code section 17200.

10 42. As a result of the conduct of Defendants, Defendants profited from
11 breaking the law. The Named Plaintiffs and the Putative Class seek disgorgement of
12 this unlawfully obtained benefit (plus interest thereon) for the four-year period
13 measured backward from the date of filing of the initial Complaint in this matter.

14 43. California Business and Professions Code section 17203, under the
15 authority of which a restitutionary order may be made, provides:

16
17 Any person who engages, has engaged, or proposes to engage
18 in unfair competition may be enjoined in any court of
19 competent jurisdiction. The court may make such orders or
20 judgments, including the appointment of a receiver, as may be
21 necessary to prevent the use of employment by any person of
22 any practice which constitutes unfair competition, as defined
23 in this chapter, or as may be necessary to restore to any person
24 in interest any money or property, real or personal, which may
25 have been acquired by means of such unfair competition.
26 Any person may pursue representative claims or relief on
27 behalf of others only if the claimant meets the standing
requirements of Section 17204 and complies with Section 282
of the Code of Civil Procedure, but these limitations do not
apply to claims brought under his chapter by the Attorney
General, or any district attorney, county counsel, city attorney,
or city prosecutor in this state.

1 44. As a result of the alleged aforesaid actions, the Named Plaintiffs and the
2 Putative Class have suffered injury in fact and have lost money as a result of such unfair
3 competition.

45. In this case, it is requested that this Court order such restitution.

FOURTH CAUSE OF ACTION

FLSA Violations

**(Action Brought By The Named Plaintiffs On Behalf Of Themselves
And The FLSA Employees Against All Defendants)**

9 46. Plaintiffs incorporate by reference and re-alleges each and every one of the
10 allegations contained in the preceding and foregoing paragraphs of this Complaint as if
11 fully set forth herein, except those paragraphs that are inconsistent with this cause of
12 action brought pursuant to the FLSA.

13 47. The FLSA regulates, among other things, the payment of overtime pay by
14 employers whose employees are engaged in commerce, or engaged in the production of
15 goods for commerce, or employed in an enterprise engaged in commerce or in the
16 production of goods for commerce. 29 U.S.C. § 207(a)(1).

17 48. Section 7(a)(1) of the FLSA, 29 U.S.C. § 207(a)(1), requires employers to
18 pay non-exempt employees who work longer than forty (40) hours in a workweek one
19 and one-half times the employee's regular rate of pay for the hours worked in the
20 workweek in excess of forty (40) hours. Defendants are, and were, subject to this
21 requirement to pay the FLSA Employees one and one-half times their regular rate of
22 pay for all hours worked in excess of forty (40) in a workweek. Defendants violated the
23 FLSA by refusing to pay the FLSA Employees overtime as required by law.
24 Specifically, Defendants did not include the value of the nondiscretionary bonuses paid
25 to the FLSA Employees in their regular rates of pay. Therefore, when Defendants paid
26 overtime wages to the FLSA Employees, Defendants paid them at the wrong rate of
27 pay, which was substantially lower than that required by the FLSA's overtime laws.

28 ||| 49. Defendants' violations of the FLSA as alleged herein have been done in a

1 willful and bad faith manner such that the FLSA Employees are entitled to damages
2 equal to the amount of overtime premium pay within the three years preceding the filing
3 of this complaint, plus periods of equitable tolling. As a result of the aforesaid willful
4 violations of the FLSA, overtime compensation has been unlawfully withheld by
5 Defendants from Plaintiffs and similarly situated persons for which Defendants are
6 liable under 29 U.S.C. § 216(b), together with an additional equal amount as liquidated
7 damages, as well as interest, reasonable attorney's fees and costs.

8 50. The employment and work records for the Plaintiffs are in the exclusive
9 possession, custody, and control of Defendants, and Plaintiffs are unable to state at this
10 time the exact amount owing to him and the FLSA Employees. Defendants are under a
11 duty imposed by 29 U.S.C. § 211(c) and the regulations of the U.S. Department of
12 Labor to maintain and preserve Plaintiffs' payroll and other employment records from
13 which the amounts of the Defendants' liability can be ascertained.

PRAYER FOR RELIEF

15 WHEREFORE, the Named Plaintiffs and the Putative Class demand judgment
16 against Defendants, and each of them, as follows:

17 1. For overtime and doubletime premium wages owed under California law
18 according to proof;

19 2. For prejudgment interest pursuant to Labor Code sections 218.6 and 1194
20 and Civil Code sections 3288 and 3291 on all amounts claimed;

21 3. For attorney's fees and costs pursuant to Labor Code sections 226 and
22 1194 and Section 16(b) of the FLSA;

23 || 4. For statutory penalties under Labor Code section 226;

24 5. For an equitable order, ordering Defendants to pay all Putative Class
25 members all wages and interest they are owed:

26 6. For an appointment of a receiver to perform an accounting of all monies
27 owed to these employees:

28 ||| 7. For any and all injunctive relief this Court deems necessary pursuant to

1 | Business and Professions Code section 17203;

2 8. For a declaratory judgment declaring that Defendants have willfully and
3 wrongfully violated their statutory and legal obligations and deprived the Named
4 Plaintiffs and all others who are similarly situated of their rights, privileges, protections,
5 compensation, benefits, and entitlements under the law, as alleged herein;

6 9. For a complete and accurate accounting of all the compensation to which
7 the Named Plaintiffs and all others who are similarly situated are entitled;

8 10. For compensatory damages against Defendants to be paid to the FLSA
9 Employees, including all wages and overtime pay owed to the FLSA Employees under
10 the FLSA;

11 11. For liquidated damages against Defendants to be paid to the FLSA
12 Employees under Section 16(b) of the FLSA;

13 || 12. For costs of suit; and

14 ||| 13. For any other and further relief that the Court considers just and proper.

15 | DATED: November 17, 2017

STRAUSS & STRAUSS, APC

By:

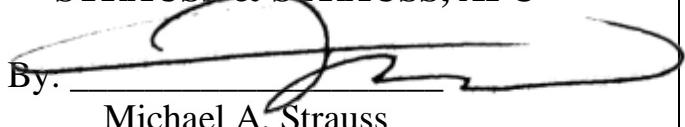
~~Michael A. Strauss
Attorneys for Plaintiff~~

1 **DEMAND FOR JURY TRIAL**
2

3 The Named Plaintiffs hereby demands a trial by jury.
4

5 DATED: November 17, 2017
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7 **STRAUSS & STRAUSS, APC**
8

9 By: 
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11 Michael A. Strauss
12 Attorneys for Plaintiff
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